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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 Jill Wiele, an individual,

10 Plaintiff,

11 vs.

12 Zenith Arizona, Inc., a Minnesota
13 corporation,

14 Defendant.

No. CV 11-01598-PHX-NVW

ORDER

15 Before the Court is Plaintiff's Motion to Compel Discovery (Doc. 15). The Court
16 will grant the motion in part for the following reasons.

17 Plaintiff suffers from cerebral palsy and requires the use of a wheelchair for
18 mobility. In August 2011, Plaintiff was a guest at Defendant's Pima Inn & Suites hotel in
19 Scottsdale, Arizona. During her stay, Plaintiff claims to have encountered several
20 discriminatory architectural barriers, including that (1) several ramps at the property are
21 excessively steep; (2) an exterior ramp is built-up and projects into vehicular traffic; (3)
22 her allegedly accessible room did not have sufficient clearance between the foot of her
23 bed and the restroom; and (4) the bathroom toilet seat in her room is too low. Plaintiff
24 now seeks property-wide discovery from Defendant to determine the full scope of the
25 property's architectural barriers to accessibility which are in violation of the Americans
26 with Disabilities Act, 42 U.S.C. § 12181 *et seq.* and the Arizonans with Disabilities Act,
27 A.R.S. § 41-1492 *et seq.* Specifically, Plaintiff requests a "comprehensive site inspection
28 of Defendant's hotel and related written discovery[,]” including:

1 all of the guest rooms alleged to be “accessible” under ADAAG 9.2, a
2 representative sampling of other guest rooms to determine compliance with
3 ADAAG 9.2.2(3), all interior and exterior common areas and amenities open to
4 guests of the hotel, including, but not limited to, pool area, dining areas, outdoor
patios and seating, ramps, routes, parking and lobby areas.

5 (Doc. 15 at 2.)

6 Defendant opposes Plaintiff’s request for a property-wide discovery on the basis
7 that (1) Plaintiff’s claims are moot because Defendant has corrected the architectural
8 barriers that were specifically named in Plaintiff’s complaint; (2) the Ninth Circuit’s
9 decision in *Oliver v. Ralph’s Grocery Co.*, 654 F.3d 903 (9th Cir. 2011) limits
10 speculative discovery of potential barriers not enumerated in the complaint; and (3) if the
11 Court orders additional discovery, Plaintiff’s request should be narrowed.

12 As an initial matter, the Court is not inclined to deny a discovery motion on
13 grounds of mootness; rather, such argument is more properly raised in a motion to
14 dismiss, which has not been filed. Further, for the reasons outlined in Plaintiff’s reply
15 (Doc. 19), it does not appear that a mootness argument would be well-taken.

16 Turning to the substance of Plaintiff’s request, the Court will grant Plaintiff’s
17 request in part. Under *Doran v. 7-Eleven*, 524 F.3d 1034, 1043-44 (9th Cir. 2008), the
18 Ninth Circuit held

19 ...where a disabled person has Article III standing to bring a claim for injunctive
20 relief under the ADA because of at least one alleged statutory violation of which
21 he or she has knowledge and which deters access to, or full use and enjoyment of,
22 a place of public accommodation, he or she may conduct discovery to determine
what, if any, other barriers affecting his or her disability existed at the time he or
she brought the claim.

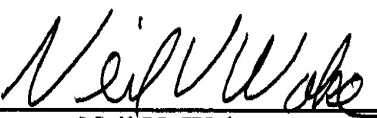
23 This holding fits the facts of this case directly: Plaintiff encountered and was deterred by
24 the architectural barriers enumerated in her Complaint; accordingly, she is permitted to
25 conduct discovery to determine what other barriers existed at the time she brought her
26 claim. *Id.* (permitting discovery beyond Plaintiff’s encountered barriers to “allow[] the
27 plaintiff to obtain by formal means the information about the scope of the defendant’s
28 violations that he may have been unable to safely ascertain himself because of those same

1 violations”). The Ninth Circuit’s decision in *Oliver* does not compel a contrary result;
2 that case dealt with pleading standards under Fed. R. Civ. P. 8, not the scope of
3 permissible discovery. *Oliver* does not provide a basis, in this circumstance, to limit the
4 scope of Plaintiff’s discovery to which she is otherwise entitled under *Doran*.

5 While Plaintiff is therefore entitled to conduct additional discovery of the
6 property, Defendant will not be compelled to allow a full-site inspection. Plaintiff has
7 requested generally “property-wide” discovery, including a full-site inspection of
8 Defendant’s property (Doc. 5 at 2). However, Plaintiff is only permitted to conduct
9 discovery of barriers which actually “affect[.]...her disability[.]” *Doran*, 524 F.3d at
10 1044. Plaintiff’s discovery will therefore be limited to the areas of the property which
11 potentially have barriers that could affect Plaintiff’s disability. Accordingly, the Court
12 will limit Plaintiff’s discovery by excluding non-public areas of the property, as well as
13 areas specifically designated for the hotel’s male guests. The Court notes that Plaintiff
14 has agreed to Defendant’s proposals to narrow the scope of discovery, with a few “minor
15 exceptions” (Doc. 19 at 7). As stated above, the Court will not require Defendant to
16 allow Plaintiff access to non-public areas of the property; otherwise, the Court is
17 confident the parties will be able to reach an agreement on the permissible scope of the
18 inspection in light of this order.

19 IT IS THEREFORE ORDERED that Plaintiff’s Motion to Compel Discovery
20 (Doc. 15) is granted to the extent the Plaintiff may conduct a more comprehensive
21 inspection of the property, but exclusive of non-public areas and areas specifically
22 designated for the hotel’s male guests.

23 Dated this 10th day of January, 2012.

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27 Neil V. Wake
28 United States District Judge